REMARKS

In the Office Action, the Examiner has set forth both a Requirement for Restriction and a requirement for election of species. In particular, the Examiner has required restriction between claims 1-7 (Group I), claims 8-14 (Group II), and claims 15-21 (Group III). This requirement is respectfully traversed, as explained below.

In the Office Action at pages 2-3, item 1, the Examiner states as follows:

> It is stated that the inventions listed as Groups I, II, and III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: Group I, Group II and III do not have a common technical feature that distinguishes the claims over the prior art. The common technical feature found in all groups is method of treating allergic rhinitis in a mammal with atomoxetine. Prior art by Fedida et al. US 20050070552 A1 teaches allergic rhinitis in a mammal with atomoxetine. Thus, the technical feature is lacking unity.

The penultimate sentence quoted above is grammatically unclear, but Applicant assumes for purposes of this response that it was meant to assert that the cited reference teaches treatment of allergic rhinitis in a mammal using atomoxetine. However, claim 8 reads on a "method of treating ***asthma*** in a mammal comprising administering a therapeutically effective amount of atomoxetine to a mammal in need of such treatment." (Emphasis added.) Contrary to the Examiner's assertion, the common technical feature identified by the Examiner (method of treating allergenic rhinitis) is NOT found in the claims of Group II. It is clear that claim 8 reads on a method of treating asthma, not allergic rhinitis. But more importantly, the cited Fedida reference fails to disclose or teach a method of treating allergic rhinitis anywhere in the four corners of the published application, and the Examiner did not cite to any particular passage in Fedida to support the assertion made in the Office Action. Thus, for at least the foregoing reasons, the Examiner has failed to provide a *prima facie* case that the identified groups do not relate to a single general inventive concept.

In order to comply with the requirements of the Office Action, however, Applicant provisionally elects the claims of Group II (claims 8-14), if the Examiner maintains the restriction requirement in spite of all of the foregoing.

Further, at page 3, item 1 of the Office Action, the Examiner states the following:

> The application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1. The species are as follows:
>
> 1) atomoxetine in claim 1,
>
> 2) atomoxetine salt in claim 2.
>
> Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added.

Applicant provisionally elects, with traverse, species (2) directed towards atomoxetine salt. Claims 1-21 are readable on the elected species. Applicant understands that if generic claims are found allowable, claims to non-elected species may be rejoined as provided by 37 C.F.R. § 1.141.

Reconsideration and withdrawal of both the Requirement for Restriction and the election of species is solicited. If any matters remain in requiring further consideration, the Examiner is respectfully requested to telephone the undersigned so that such matters can be discussed, and if possible, promptly resolved.

Respectfully submitted,

/Jeffrey D. Frantz/
Jeffrey D. Frantz
Reg. No. 56,189
Attorney for Applicant
MCGLINCHEY STAFFORD, PLLC
301 Main Street, 14th Floor
Baton Rouge, LA 70802
Telephone: 225-383-9000
Facsimile: 225-343-3076
Email: jfrantz@mcglinchey.com